

F I L E D  
Clark  
District Court

Oct - 6 2006

For The Northern Mariana Islands  
By \_\_\_\_\_  
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN MARIANA ISLANDS

JOHN (JACK) ANGELLO, ) Civil Action No. 03-0014  
Plaintiff )  
v. ) FINDINGS OF FACT AND  
NORTHERN MARIANAS ) CONCLUSIONS OF LAW AFTER  
COLLEGE, ) GRANT OF FED.R.CIV.P. 52(c)  
Defendant ) MOTION BY DEFENDANT  
\_\_\_\_\_  
)

THIS MATTER came before the court on October 2-3, 2006, for a bench trial on the remaining two Title VII claims for relief in plaintiff's third amended complaint: gender discrimination and retaliation. Plaintiff appeared personally and by and through his attorney, Danilo Aguilar; defendant appeared by and through its attorney, F. Matthew Smith.

1 At the conclusion of plaintiff's case in chief, defendant moved for judgment  
2 on partial findings, pursuant to Fed.R.Civ.P. 52(c).<sup>1</sup> The court granted the motion  
3 and indicated that these findings of fact and conclusions of law would follow.  
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5 This lawsuit proceeded to trial before the court on plaintiff's two remaining  
6 post-pretrial motions claims for relief: gender discrimination and retaliation under  
7 Title VII, 42 U.S.C. § 2000e. The gist of both claims for relief was that Barbara  
8 Moir who, during the relevant time periods, held various positions equal to or above  
9 plaintiff at Northern Marianas College (NMC). Plaintiff alleges that she  
10 discriminated against him because he is a male and retaliated against him for filing  
11 complaints against her with the College itself and the U.S. Equal Employment  
12 Opportunities Commission (EEOC). Plaintiff testified, as did Leonard "Butch"  
13 Wolfe, Jr., and Lino Santos (whose deposition testimony was read into the record).  
14 Plaintiff also entered into evidence numerous documents. Defendant also  
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20 Rule 52(c) provides in full:  
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22 Judgment on Partial Findings. If during a trial without a jury a party  
23 has been fully heard on an issue and the court finds against the party  
24 on that issue, the court may enter judgment as a matter of law against  
25 that party with respect to a claim or defense that cannot under  
26 controlling law be maintained or defeated without a favorable ruling on  
that issue, or the court may decline to render any judgment until the  
close of all the evidence. Such judgment shall be supported by  
findings of fact and conclusions of law as required by subdivision (a)  
of this rule.

introduced several documents.

## Findings of Fact

Plaintiff began his employment with defendant Northern Marianas College in June, 1996. He was originally hired as the Director of Apprentice Trades, but his program was later called Vocational Trades, a part of the Continuing Education program at NMC. His program was later placed in the department of Arts and Sciences, which was then overseen by Dr. Barbara Moir.

On October 28, 1998, plaintiff filed a “gender-based” EEO complaint with NMC Director of Human Resources, against Barbara Moir, who was then Vice President of Instruction. Plaintiff complained of her “past and present pattern of harassment of male employees at NMC” and her “direct harassment of me in my work here at NMC.” Plaintiff concluded that he would wait for the next step in the process, which he assumed was an “intake meeting,” at which time he would “provide evidence and make my complete statement for your records.” Plaintiff’s

On March 9, 1999, plaintiff filed a “notification of grievances” with the president of the college (then Agnes McPhetres), “officially requesting an inquiry...into several incidents involving [Moir] and myself, which have been very disturbing, demoralizing and, possibly, contrary to BOR [Board of Regents] policy

1 and employee contractual rights and obligations. I regret the incidents have risen to  
2 a height of professional and personal intolerability, and remedial intervention is now  
3 necessary.” Plaintiff then lists a number of items that he feels support his claim.  
4 None of the items complained of involves plaintiff’s sex and most of them occurred  
5 before plaintiff’s first EEO complaint against Moir. Plaintiff closed that he would  
6 “support the above allegations with testimony and additional proof, when  
7 necessary.” Plaintiff’s Ex. 9.

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9 In a March 26, 1999, memo to the NMC Human Resources Director, plaintiff  
10 complains, as one of twelve “unresolved” grievances, that Moir has a bias against  
11 men and local participants in programs. Because the matters remain “unresolved”  
12 despite meetings with Moir and his immediate supervisor, and even though they had  
13 been presented to the College President and discussed by her appointed mediator,  
14 plaintiff wishes the matters reviewed by the Employee Appeals Committee.  
15 Plaintiff’s Ex. 11.

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17 On November 12, 1999, plaintiff agreed by his signature to a  
18 “Recommendation for Settlement - Grievance for Dr. Jack Angello,” prepared by  
19 Kohne Ramon as Director of Human Resources Office and sent to NMC President  
20 Agnes McPhetres. Plaintiff agreed in the agreement that it would settle all pending  
21 matters, and he received a pay “one step increase for the new position of Director  
22 of Technical Trades/Special Projects,” compensation for a portion of a class he  
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1 ceased teaching due to health problems, and “training on sexual harassment for  
2 both male and female employees of the College,” for which the Director of the  
3 Human Resources Office indicated a desire to see “immediate action on the latter  
4 concern.” The settlement agreement recognized plaintiff’s concern that none of his  
5 prior actions be “used in any way to retaliate against him.” Plaintiff’s Ex. 14.  
6 Neither Dr. Moir nor any discrimination on the basis of sex directed to plaintiff  
7 individually were mentioned in the settlement memo.

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10 On December 13, 1999, plaintiff sent a memo to NMC’s Director of Human  
11 Resources noting the “amicable resolution” of his personnel grievance against NMC  
12 (not Moir). Plaintiff’s Ex. 15.

13  
14 On December 7, 1999, plaintiff sent a letter to an EEOC Investigator in  
15 Honolulu, Hawaii, noting the amicable resolution of his grievances and asking that  
16 his EEOC complaint be withdrawn. In the letter, plaintiff expresses his concern  
17 that the sexual harassment training has not yet been conducted and expresses his  
18 concern that retaliation might already have begun, since an evaluation that was  
19 supposed to have occurred some months prior had not yet been scheduled and that  
20 “some NMC administrators here at the college tried to adversely affect the attached  
21 agreement, and this rancor will surely carry over to next year.” Plaintiff’s Ex. 16.

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24 On March 2, 2000, plaintiff signed another two-year contract with NMC.  
25 The contract provided that it could be terminated without cause upon sixty days’

1 written notice. Defendant's Ex. A, ¶ VII(C).

2 On March 9, 2001, plaintiff filed another grievance against Moir, accusing her  
3 of harming plaintiff's personal and professional life and wanting to know why "a  
4 beneficial program [the Pacific Rim Academy, *see infra*] has been virtually beaten to  
5 death through the use of destructive rumors, a lack of middle-management support,  
6 and the apparent mean-spirited acts of academic sabotage." Plaintiff's Ex. 41. The  
7 acts of sabotage and lack of support were Moir's "intentional" omission of  
8 Audio/Visual classes for the Fall 2000 class schedule, her failure to attend a  
9 luncheon meeting set up by plaintiff and others, and Moir's "unilateral" decision to  
10 again omit the A/V classes, this time from the Spring 2001 class schedule. Plaintiff  
11 then acknowledges that the classes must be approved by the Academic Council  
12 before they can be included, but notes that the Academic Council "is chaired by  
13 [Moir's] sister." Plaintiff then mischaracterizes the earlier settlement by saying that  
14 it required "that B. Moir receive sexual harassment training...and I don't believe Ms.  
15 Moir has received her sexual harassment (against male workers) training." In the  
16 "Actions Requested" portion of the memo, plaintiff asks that the NMC President  
17 "re-visit the previous EEOC agreement and satisfy the stipulations, including a filing  
18 of a new EEO violation against Ms. Moir (repeat offender)." He also asks that no  
19 one "retaliate against J. Angello" and that NMC "reach a fair settlement with him."  
20 Plaintiff's Ex. 41.

1 On June 20, 2001, plaintiff sent a memo to the president of NMC, stating  
2 that as per Board of Regents policy, his grievance was to be administered “in a  
3 satisfactory and timely manner,” which had not yet occurred, and asks to be advised  
4 of the President’s intentions. Plaintiff’s Ex. 58.

5 In an e-mail reply of July 2, 2001, Kohne Ramon stated that the President  
6 wished to meet with the parties, that Moir was then off-island but expected to  
7 return in two weeks, and asked plaintiff to provide documentation to support his  
8 claims of personal and professional harm. Plaintiff’s Ex. 59.

9 On September 24, 2002, plaintiff and ten other NMC employees were  
10 terminated by the newly-installed NMC President, Kenneth E. Wright, as part of a  
11 major reorganization of the College. Plaintiff’s Ex. 85. Wright noted that although  
12 he had not yet had time to assess plaintiff’s work, “your peers and colleagues have  
13 had nothing but appreciation for your work at Northern Marianas College.” In  
14 accordance with his contract, plaintiff was paid for the following sixty days,  
15 although his termination was to take effect immediately.

16 Plaintiff’s Exhibit 100 is a copy of the decision of the NMC Employee  
17 Appeals Committee. None of the items originally asked by plaintiff to be  
18 considered by the Committee named Dr. Moir. The Committee’s decision noted  
19 that at the first hearing, on August 27, 2002, President Wright had “suggested he be  
20 given time to meet with Dr. Angello to see if a resolution of his concerns could be

arrived at without going through the Appeals Committee. Dr. Angello agreed."

The meeting between Wright and plaintiff was deemed unsuccessful, so the hearing was re-scheduled to November 26, 2002.

At the November 26, 2002, hearing, plaintiff presented a letter listing all the things he wanted addressed by the Committee, which included several new areas of grievance. Ultimately, the Appeals Committee concluded that it lacked jurisdiction to consider plaintiff's complaints, since he was no longer an employee. *Id.*

Conclusions of Law

Plaintiff may establish a prima facie claim of sex discrimination under Title VII, 42 U.S.C. § 2000e-2(a)(1), by either direct or indirect (circumstantial) evidence. Mondero v. Salt River Project, 400 F.3d 1207 (9th Cir. 2005), relying in part on McDonnell Douglas Corp. v. Green, 93 S.Ct. 1817 (1973).

Plaintiff can show by direct evidence that an employer (here, Moir as an employee of defendant College) discriminated against him because of his gender. Plaintiff presented no direct evidence that Moir discriminated against him personally, either because he is a male or for any other reason.

Plaintiff can also present indirect (circumstantial) evidence that (1) he was a member of a protected class, (2) that he applied for and was qualified for a position he sought, (3) despite being qualified, he was rejected, and (4) that after he was

1 rejected the position remained open and the employer continued to seek other  
2 applications from people with similar qualifications.  
3

4 For a disparate treatment claim to be a claim of discrimination on the basis of  
5 sex, the claimant's sex must have "actually played a role in [the decisionmaking]  
6 process and had a determinative influence on the outcome." Hazen Paper Co. v.  
7 Biggins, 113 S.Ct. 1701 (1977), cited in Jackson v. Birmingham Bd. of Education,  
8 125 S.Ct. 1497 (2005) (dissent). As stated in the statute itself: "[A]n unlawful  
9 employment practice is established when the complaining party demonstrates  
10 that...sex...was a motivating factor for any employment practice, even though other  
11 factors also motivated the practice." 42 U.S.C. § 2000e-2(m).

14 To establish a *prima facie* claim for retaliation under Title VII, 42 U.S.C. §  
15 2000e-3(a), plaintiff must show, by a preponderance of the evidence:  
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- 17 1. That he engaged in a protected activity;
- 18 2. That defendant took an adverse employment action against him; and,
- 19 3. That there is a causal link between plaintiff's protected activity and the  
20 adverse action.

22 When adverse employment decisions closely follow complaints of  
23 discrimination, retaliatory intent may be inferred.  
24

25 Plaintiff offered no direct or circumstantial evidence to support either of his  
26 claims. When asked for specific examples of sex discrimination or retaliation, he

1 could offer none. Rather, his testimony was that he “got a general feeling of  
2 animosity from” Moir and discerned “tension” after he had filed his first EEOC  
3 complaint in the Fall of 1998. He also felt that her “body movements” showed she  
4 took pleasure in causing the Vocational Trades department (presumably as plaintiff’s  
5 alter ego) to suffer. Plaintiff “came to believe” that questions about his post-  
6 secondary teaching experience totals were the responsibility of Moir. When factual  
7 discrepancies in his various applications regarding his post-secondary teaching  
8 experience were pointed out to him during trial, plaintiff attributed all of them to  
9 the “severe stress” he was under when he filled them out. Also, even though he had  
10 been told by Jack Sablan that there was no funding for the Pacific Rim Academy  
11 that he wished to commence, plaintiff “felt there was some other reason classes  
12 were stopped.” At every turn, plaintiff perceived setbacks to his programs as  
13 attributable exclusively to Dr. Moir’s influence or behind-the-scenes machinations,  
14 although he acknowledged that during most of the relevant time she had no direct  
15 supervisory control over him or his program. There was no evidence that, when she  
16 was briefly the interim president of the College, she took any action directly against  
17 him or his program in retaliation for his EEO complaints against her. Further,  
18 despite acknowledging that his tendency to document everything might sometimes  
19 be a burden to others, plaintiff was unable to document facts about his own  
20 teaching experience and blamed “stress” for contradictory claims. After plaintiff  
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1 acknowledged that he was interviewed for positions at NMC after he had been  
2 terminated, he said the interviews were only conducted so NMC could “cover  
3 themselves.” When plaintiff asked why Moir’s name rarely appears in any of his  
4 early grievances or the settlements, he says that “everybody knew” that she was who  
5 they were talking about. Finally, plaintiff admitted that Moir never gave him a bad  
6 evaluation, or demoted him, or instituted any disciplinary action against him, which  
7 he attributed to her not having any reason for doing so. Plaintiff presented no  
8 evidence that Moir subjected him to, or was in a position to subject him to, gender  
9 discrimination, disparate treatment in the workplace, or a hostile work environment.  
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12       Witness Wolfe could offer no direct evidence of gender discrimination  
13 against plaintiff by Moir. He observed “just tension” between the two of them, and  
14 felt that she did not want to deal with either of them and just wanted to “push her  
15 weight around.” He testified that he met with Jack Sablan “plenty of times” about  
16 the Pacific Rim Academy program (PRA)<sup>2</sup> but was always told by Sablan that there  
17 was no funding for, or interest in, PRA. Wolfe testified that after two years of  
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23       Witness Wolfe is a noted sound effects editor, having won many awards in  
24 his field of expertise. He and plaintiff had met, discovered that they grew up close  
25 to each other, and, as their friendship grew, began discussing Wolfe’s concern that  
26 sound effects work was being outsourced by Hollywood to Asian countries, and that  
perhaps a local program could be started to teach young people the skills and  
technology, perhaps leading to the Commonwealth becoming a site for future work.

1 unkept promises from every quarter, he abandoned the project with NMC.

2 Lino Santos' deposition testimony revealed that he felt the main problem was  
3 that there was no support for the vocational trades program from those in positions  
4 of responsibility at NMC. He could not recall Moir ever saying anything bad to  
5 plaintiff or doing anything bad to him. He testified that he "sort of felt" she did not  
6 like the program, even though she said she did. He testified that plaintiff told him  
7 he might leave the program, although he did not say why, and Santos did not want  
8 to lose him because he felt plaintiff had always been helpful to him and the  
9 program. He testified he felt Moir continually showed a negative attitude against the  
10 vocational trades program, but not against plaintiff, and that he never saw or heard  
11 anything suggesting Moir did not like plaintiff.  
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13 In conclusion, after two days of trial, the court was left with the indelible  
14 impression that plaintiff's perception of events found no support in the admissible  
15 evidence. A review of all the testimony and documents demonstrates that, when  
16 finally given the opportunity to prove his allegations, he could not make out a *prima*  
17 *facie* case. Accordingly, defendant's motion for judgment on partial findings was  
18 granted.  
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20 The court did not, and need not, address plaintiff's contention that he was  
21 entitled to Commonwealth civil service protections, despite the express language of  
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2 his contract that he could be terminated without cause.

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4 Costs are awarded to defendant, pursuant to 28 U.S.C. § 1920.

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6 DATED this 6th day of October, 2006.

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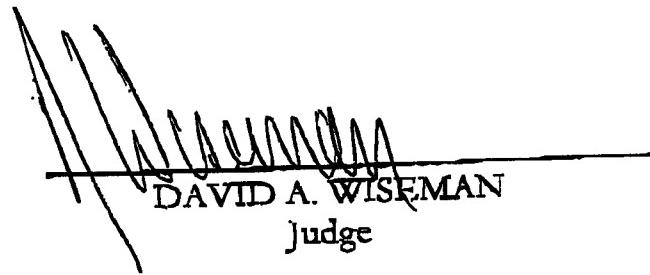
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DAVID A. WISEMAN  
Judge